Wong Chun Wah v Kok Kam Chee (P)

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-02–627 OF 1999
MOHD GHAZALI YUSOFF, LOW HOP BING AND HASAN LAH JJCA
7 APRIL 2008

Trusts and Trustees — Trust deed — Property held on trust for benefit of plaintiff — Breach of promise of marriage by plaintiff — Invoking aid of equity — Whether plaintiff had acted rightly and fairly to defendant

The plaintiff, a married Singapore businessman promised to marry the defendant, a Malaysian woman and asked the defendant to look for a house in Malaysia. In 1995, the defendant succeeded in procuring a house ('the property') which the plaintiff purchased at a consideration of RM99,000. However, the defendant executed the sale and purchase agreement as the purchaser. On 16 February 1995, in the name of the defendant, the plaintiff deposited a sum of RM50,000 in the fixed deposit account by way of housing loan security for the property. On the same date, the defendant executed the trust deed to the effect that the defendant was holding the property and the RM50,000 in trust for the plaintiff, and the defendant shall sign all relevant documents to effect the transfer of the property and the fixed deposit as directed by the plaintiff. However, subsequently the relationship between the plaintiff and the defendant became acrimonious and a complete breakdown ensued. Consequently, the plaintiff claimed, based on the trust deed, for the transfer of the property, by the defendant to Amity Evergreen Sdn Bhd and the transfer of the sum of RM50,000 in the fixed deposit account by the defendant to the plaintiff, and the refund of the sums of RM63,833.87 and S$23,374.91 by the defendant to the plaintiff; damages and costs. The defendant's counterclaim was for damages based on the plaintiff's breach of promise to marry the defendant, and a declaration that the trust deed was null and void. The High Court dismissed the plaintiff's claim and allowed the defendant's counterclaim. Hence this appeal by the plaintiff.

Held, dismissing the appeal with costs:

(1) Applying the judicial pronouncement in *Eastern Properties Sdn Bhd v Hampstead Corporation Sdn Bhd* [2007] 6 CLJ 538 (CA) to the instant

appeal and having regard to the standard of a reasonable man, the court was of the view that the plaintiff's breach of promise of marriage clearly showed that the plaintiff had not acted rightly and fairly to the defendant. It also revealed that the plaintiff had not acted with clean hands (see para 26).

(2) On the facts of the case, the enforcement of trust by the court would obviously bring about a condonation of the plaintiff's breach of promise of marriage and result in a situation which wholly offended the maxims of equity. As the plaintiff's conduct obviously ran counter to 'equity' in its popular sense of being right and fair, and had not come into equity with clean hands, he was not entitled to seek equitable remedy for the purpose of enforcing the trust (see para 27).

[Bahasa Malaysia summary

Plaintif, seorang ahli perniagaan warganegara Singapura yang telah berkahwin telah berjanji untuk mengahwini defendan, seorang wanita warganegara Malaysia dan menyuruh defendan mencari sebuah rumah di Malaysia. Pada 1995, defendan berjaya mendapatkan sebuah rumah ('hartanah tersebut') yang mana dibeli oleh plaintif pada harga RM99,000. Akan tetapi, defendan yang menandatangani perjanjian jual beli sebagai pembeli. Pada 16 Februari 1995, di atas nama defendan, plaintif mendepositkan wang sejumlah RM50,000 ke dalam akaun simpanan tetap sebagai cagaran pinjaman perumahan untuk hartanah tersebut. Pada tarikh yang sama, defendan menandatangani satu surat ikatan amanah bahawa defendan memegang hartanah tersebut dan jumlah RM50,000 atas amanah untuk plaintif, dan bahawa defendan akan menandatangani semua dokumen-dokumen yang relevan untuk membolehkan pemindahan hartanah tersebut dan deposit tetap seperti yang diarahkan oleh plaintif. Tetapi, kemudiannya hubungan di antara plaintif dan defendan menjadi renggang dan akhirnya terputus. Selepas itu, plaintif menuntut, berdasarkan surat ikatan amanah, untuk pindah milik hartanah tersebut oleh defendan kepada Amity Evergreen Sdn Bhd dan pindah milik jumlah RM50,000 di dalam akaun simpanan tetap oleh defendan kepada plaintif, dan pengembalian jumlah RM63,833.87 dan S$23,374.91 oleh defendan kepada plaintif; ganti rugi; dan kos. Tuntutan balas defendan adalah untuk ganti rugi berdasarkan mungkir janji plaintif untuk berkahwin dengan defendan, dan satu deklarasi bahawa surat ikatan amanah adalah terbatal dan tidak sah. Mahkamah Tinggi menolak tuntutan plaintif dan membenarkan tuntutan balas defendan. Maka rayuan ini oleh plaintif.

Diputuskan, menolak rayuan dengan kos:

(1) Mengaplikasikan pengumuman kehakiman dalam kes *Eastern Properties*

Sdn Bhd v Hampstead Corporation Sdn Bhd [2007] 6 CLJ 538 CA kepada rayuan ini dan dalam mengambilkira standard orang munasabah, mahkamah berpandangan bahawa keingkaran plaintif dalam janji perkahwinan dengan jelas menunjukkan bahawa plaintif telah tidak bertindak betul dan adil kepada defendan. Ia juga didedahkan bahawa plaintif tidak bertindak dengan suci hati (lihat perenggan 26).

(2) Berdasarkan fakta-fakta, penguatkuasaan amanah oleh mahkamah akan dengan jelas menunjukkan pemaafan keingkaran plaintif dalam janji perkahwinannya dan menyebabkan satu situasi yang melanggar maxim ekuiti. Oleh kerana tindakan plaintif melanggar 'ekuiti' dalam maksud popularnya iaitu betul dan adil, dan tidak bersandar pada ekuiti secara jujur, maka beliau tidak berhak menuntut remedi ekuiti untuk tujuan menguatkuasakan amanah tersebut (lihat perenggan 27).]

Notes

For a case on trust deed in general, see 12 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 2495–2496

Cases referred to

Eastern Properties Sdn Bhd v Hampstead Corporation Sdn Bhd [2007] 6 CLJ 538 (folld)

Jones v Lenthal (1669) 1 Ch Cas 154 (folld)

Pathma d/o Naganather & Anor v Nivedita d/o Naganather [2006] 1 MLJ 132 (refd)

Tan Sri Khoo Teck Puat & Anor v Plenitude Holdings Sdn Bhd [1994] 3 MLJ 777 (refd)

Appeal from: Civil Suit No S3–22–498 of 1995 (High Court, Kuala Lumpur)

Joseph Yeo (Joseph Yeo) for the appellant.
Lavendran (Loke & Associates) for the respondent.

Low Hop Bing JCA (delivering judgment of the court):

APPEAL

[1] This is the appellant's ('the plaintiff's') appeal against the decision of the

A High Court in dismissing his claim against the respondent ('the defendant') and in allowing the defendant's counterclaim, with costs.

THE PLAINTIFF'S CLAIM

B **[2]** The plaintiff's claim, based on a trust deed executed by the defendant on 16 February 1995 in favour of the plaintiff ('the trust deed'), prayed for the transfer, by the defendant to Amity Evergreen Sdn Bhd, of the land held under HS(D) 76684, PT No 12691 together with a double storey terrace house erected thereon ('the property'); the transfer, by the defendant to the C plaintiff, of the sum of RM50,000 in the fixed deposit account No 4214262047346 at Kuala Lumpur Dang Wangi Malayan Banking Bhd ('the fixed deposit'); the refund by the defendant to the plaintiff of the sums of RM63,833.87 and S$23,374.91; damages and costs.

D THE DEFENDANT'S COUNTERCLAIM

[3] The defendant's counterclaim was for damages based on the plaintiff's breach of promise to marry the defendant, and a declaration that the trust deed is null and void, and costs.

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FACTUAL BACKGROUND

[4] After a full trial, the High Court arrived at a specific finding of facts which I now narrate below.

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[5] The plaintiff, a Singapore businessman, is married and has been blessed with three children.

G **[6]** The plaintiff met the defendant, a Malaysian woman who worked as a karaoke singer in Singapore.

[7] Having developed a clandestine relationship with the defendant in 1994, the plaintiff asked the defendant to look for a house in Malaysia as the H plaintiff had promised to marry the defendant as his wife.

[8] In 1995, the defendant succeeded in procuring a house which is the property. The plaintiff purchased it at a consideration of RM99,000. However, the defendant executed the sale and purchase agreement on I 6 January 1995 as the purchaser.

[9] On 16 February 1995, in the name of the defendant, the plaintiff deposited a sum of RM50,000 in the fixed deposit account by way of housing loan security for the property.

[10] On the same date, the defendant executed the trust deed to the effect that the defendant was holding the property and the RM50,000 in trust for the plaintiff, and the defendant shall sign all relevant documents to effect the transfer of the property and the fixed deposit as directed by the plaintiff. The trust deed did not cover the other sums claimed by the plaintiff.

[11] The plaintiff and the defendant were staying together whenever the plaintiff visited Malaysia, and also while they were on holidays, at the plaintiff's expenses, in the People's Republic of China, Taiwan and Hong Kong. The plaintiff had introduced the defendant as his wife to his relatives while in the People's Republic of China.

[12] The plaintiff had also allowed the defendant to use his ATM card, besides asking her to attend to the renovation and air-conditioning for the property.

[13] When the defendant subsequently discovered that the plaintiff was already married and had his own family establishment, and so had refused to marry her, the relationship between the plaintiff and the defendant became acrimonious. A complete breakdown ensued.

[14] Consequently, the plaintiff commenced this claim and the defendant filed the counterclaim.

ENFORCEMENT OF TRUST

[15] In essence, learned counsel Mr Joseph Yeo submitted for the plaintiff that the plaintiff is entitled to enforce the trust contained in the trust deed, as the defendant was holding the property and the RM50,000 in trust for the plaintiff, as a result of which, the defendant is required to transfer the property and the RM50,000 as directed by the plaintiff.

[16] It was argued by the defendant's learned counsel Mr Lavendran that, inter alia, the property was purchased and the RM50,000 was deposited as gifts to the defendant in consideration of love and affection arising from the intended marriage which the plaintiff has promised the defendant.

[17] On a balance of probabilities, the learned trial judge found for the defendant as set out earlier, on the ground, inter alia, that the plaintiff was in breach of the promise of marriage, for which the defendant was also additionally awarded a sum of RM5,000 as damages.

[18] Having considered the submissions of both the learned counsel and the specific finding of facts by the learned trial judge, it is clear to me that the plaintiff's claim revolves around the enforcement of the trust contained in the trust deed, while the defendant is resisting that enforcement.

[19] For the purpose of this appeal, the question for determination is whether the plaintiff is entitled to enforce the trust against the defendant when he has breached the promise of marriage which he has made to the defendant.

[20] In my view, the plaintiff's attempt in enforcing the trust involves invoking the aid of equity in the court exercising chancery jurisdiction.

[21] In this regard, two maxims of equity stand out significantly. These maxims are:

(1) he who seeks equity must do equity; and

(2) he who comes into equity must come with clean hands.

[22] Applying the first maxim, the plaintiff who is now seeking the equitable relief of enforcing the trust must do equity which, in popular parlance, means being right and fair to the defendant (see eg *Snell's Equity*, Thomson Sweet & Maxwell 2004, p 96).

[23] The second maxim is related to the *ex turpi causa non oritur actio* of the common law. It is very similar to the first maxim, except that the second maxim looks to the past rather than the future. The plaintiff, as the claimant, not only must be prepared now to do what is right and fair, but also must show that his past record in the transaction is clean; for 'he who has committed iniquity … shall not have equity': *Jones v Lenthal* (1669) 1 Ch Cas 154; and *Snell's Equity*.

[24] In *Eastern Properties Sdn Bhd v Hampstead Corporation Sdn Bhd* [2007] 6 CLJ 538 (CA), Gopal Sri Ram JCA, speaking for the Court of Appeal, in para 14 at p 547 explained the applicability of equitable maxims with unrivalled clarity as follows:

> It is beyond argument that equitable doctrines are not to be dealt with in a rigid fashion. They are by their very nature flexible and meant to be applied in such a fashion as produces a just result on the facts and circumstances of a given case. But there are certain basic threads that have been woven into the fabric of equitable doctrines through the pronouncements in the leading cases on the subject. One of these is that a supplicant who prays in aid equitable assistance must himself or herself be not guilty of equitable misconduct. This is sometimes put in the form

of the maxim: He who comes to equity must come with clean hands. So a contract breaker cannot successfully invoke the remedy of specific performance.

[25] Hence, where the litigant therein ie *Eastern Properties* was not in a position to meet its obligation under the rescission agreement and was guilty of a failure to abide by the promise it had made, it would be contrary to all principles of equity to allow it to succeed.

[26] Applying the above judicial pronouncement to the factual matrix in the instant appeal and having regard to the standard of a reasonable man, I am of the view that the plaintiff's breach of promise of marriage clearly shows that the plaintiff has not acted rightly and fairly to the defendant. It also reveals that the plaintiff has not acted with clean hands.

[27] To succeed in the enforcement of trust, the plaintiff has to conform to the above maxims of equity, otherwise, he is disentitled to enlist the aid of equity. On the facts, the enforcement of trust by the court would obviously bring about a condonation of the plaintiff's breach of promise of marriage and result in a situation which wholly offends the aforesaid maxims of equity.

[28] As the plaintiff's conduct obviously runs counter to 'equity' in its popular sense of being right and fair, and has not come into equity with clean hands, he is not entitled to seek equitable remedy for the purpose of enforcing the trust.

[29] The learned trial judge's specific finding of facts is also supported by and consistent with the evidence adduced before him. There was no misdirection when he dismissed the plaintiff's claim. He was also correct in allowing the defendant's counterclaim. So there is no room for appellate interference: see eg *Tan Sri Khoo Teck Puat & Anor v Plenitude Holdings Sdn Bhd* [1994] 3 MLJ 777 (SC); and *Pathma d/o Naganather & Anor v Nivedita d/o Naganather* [2006] 1 MLJ 132 (CA).

CONCLUSION

[30] The answer to the above question is in the negative. The plaintiff's appeal is devoid of merits and is dismissed with costs. The orders of the High Court are hereby affirmed. Deposit to the respondent on account of taxed costs.

A **[31]** My learned brothers, Mohd Ghazali Yusoff JCA and Hasan Lah JCA have read this judgment in draft and have expressed their agreement with it to become the judgment of the court.

Appeal dismissed with costs.

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Reported by Sally Kee

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